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E.O. 12958: N/A

TAGS: PARM PREL CWC

SUBJECT: CWDEL IDEAS FOR THE SECOND REVIEW CONFERENCE -
ISSUES AND STRATEGY

This is CWC-91-07.

SENSITIVE BUT UNCLASSIFIED

SUMMARY

¶1. (U) Now that the Conference of States
Parties and the final Executive Council
session have ended, OPCW delegations and the
Technical Secretariat turn their attention
more fully to the upcoming Review
Conference. The Director General's e8
and lengthy TS annex have just been issued(a copy has been scanned to ISN/CB for
distribution) and are on the OPCW external
server. Open Ended Working Group Chairman
Parker has planned two meetings in December
(4 and 12) to discuss the DG's paper, to be
followed in January by weekly sessions of
the OEWG. He has projected drafting the
RevCon report by the end of February.
France will host the next P-5 meeting
January 15 to discuss the RevCon. Del will
need broad as well as specific guidance on
priorities for the U.S. among th% iany
agenda items for the RevCon.

¶2. (SBU) Ambassador Javits chaired a
brainstorming session with the delegation
following the CSP. Below are our thoughts
on both issues and pvncess, substance and
strategy, to contribute to the thinking in
Washington. We would welcome an early
response to these ideas, as well as more
detailed guidance on key U.S. objectives as
the RevCon preparations move forward.

¶3. (SBU) We should push very hard to clear
away the EC &debris8) in particular, the
thorny issues that are repeatedly deferred -
before the RevCon so that they will not
interfere with a serious look at the
organization and its future. Such
longstanding issues as the Maradykovsky

facility agreements and the Russian hold on the U.S. agreements, should be resolved in EC-52 so that their political overtones do not color the RevCon. Del will work with WEOG and the expanded WEOG countries to cement traditional alliances and develop strategies on specific issues for the RevCon. We will need very broad cooperation on issues of importance to us, and Del will reach beyond WEOG to find new like-minded allies on priority U.S. issues.

¶4. (SBU) In general, del advocates a proactive approach to the RevCon. Recent CSP and EC sessions have shown an increasing trend of the WEOG and other like-minded states defending against various NAM proposals while fighting to achieve even average progress on many issues due to the linkage (appropriate or not) between various articles of the Convention. The question for the Review Conference is whether we want only to &do no harm⁸ or whether we want to pursue new initiatives for the future. A clear U.S. strategy, including critical priority objectives vs. those that would be nice to have, and even initiatives that could be traded off in the end game, could put the U.S. and others in a much stronger position going in to the drafting and negotiating process scheduled to begin early next year.

INDUSTRY ISSUES

¶5. (SBU) OCPF site selection: The First RevCon emphasized the importance of OCPF inspections, while noting the problems with the current methodology used by the TS for selection of sites for inspection. Most delegations would acknowledge that the DG,s recent move to modify the selection methodology will go a long way toward resolving the perceived unfairness by allowing more OCPF inspections to go to States Parties with larger numbers of declared OCPF sites. The NAM has asked that consultations be resumed as soon as possible on this matter. It should be noted that this was done at the request of China, who is understandably concerned with the large increase in inspection numbers they can expect starting in 2008. Even though many delegations refer to the DG,s recent efforts as an &interim solution,⁸ we should push for the consultation to (1) primarily focus on the remaining unapplied mechanism from VA Part IX (i.e., &Proposals by States Parties...), and (2) agree to withhold judgment on the efficacy of the DG,s revised methodology for at least a year, at which time we may have sufficient experience and data in hand to know whether this needs to be revisited.

¶6. (SBU) &Improved⁸ OCPF declarations: In parallel with the site selection discussion, the TS is preparing a paper (at the request of delegations) on ways that the current OCPF declaration process might be improved to provide more relevant &information...available to the Technical Secretariat...⁸ We have been careful to

delegations that discussions on this topic need to be done within the parameters of existing declaration formats and procedures, so as to reduce the difficulty of States Parties in implementing them. If done correctly, the DG could implement things like improved product group codes through relatively simple modifications to the Declarations Handbook, under his own authority. This would also prevent unnecessarily stirring up some delegations (e.g., India) who clearly believe in the hierarchy of risk and that OCPF sites are intended to declare less information than sites with Scheduled chemicals. It could also be presented to delegations as an improvement in the tools available to their industry in making their declarations, overcoming some of the current frustration that industry often expresses with the current product group codes that do not fit their industry well. The Del would encourage Washington to make the outcome of its current deliberations on this matter available to the TS as soon as possible in order for them to be given adequate consideration in the TS paper that is expected to be published in about a month, s time.

¶7. (SBU) Schedule 3 transfers to States not Party: The First RevCon discussed the need for States Parties to take the necessary measures to fully implement end-use certificates for the transfer of Schedule 3

chemicals to States not Party. In that light, the EC adopted a &do little8 decision on this matter (EC-47/DEC.8, dated 8 November 2006). Part of the EC-47 decision recommends that the RevCon review the matter and consider the need to establish other measures in this regard.⁸ We should be prepared for a significant battle on this matter at the RevCon. Iran clearly sees the language of VA Part VIII paragraph 27 as a clear call to not only consider but establish other measures regarding transfers of Schedule 3 chemicals to States not Party⁸ and that we are late in doing so, given the five years after EIF timeline laid out. Iran points out time and again that some large percentage (80-90 percent) of the Schedule 3 transfers to States not Party each year go to a single country in their region. If it is possible, we ought to prepare whatever statistics and positions we may need to combat this. Although it may not be possible, for sensitivity reasons, to lay out the details of the extensive system the U.S. has in place to ensure that these types of transfers are for purposes consistent with the Convention, we may still be able to make some reasoned statements in this regard as a counter.

¶8. (SBU) Sampling and analysis during Schedule 2 inspections: Given that the experiences of the recent Schedule 2 inspection involving sampling and analysis is still fresh in our minds, the Del is encouraged that discussions will occur in Washington soon on what we have learned and what matters need to be addressed further with the TS. The Del would encourage holding these discussions with the TS as s/oj as possible. More generally, the TS has committed to prepare a report on their

experiences during the 18-month & trial period.⁸ However, it is important to keep in mind that (1) the TS has started referring to the & trial period⁸ as a & start-up period⁸, (2) the 2008 budget calls for carrying out a similar number of Schedule 2 inspections with sampling and analysis in 2008, and (3) the TS will carry out two or three more such inspections in the first quarter of 2008 before their trial period is completed. We run the real risk that the TS report on their experiences from the trial period will come out too late to be given any real attention during the RevCon. The TS and some delegations (e.g., UK) would

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probably argue that this timing is really not important, as sampling and analysis is mandated during Schedule 2 inspections and need not be discussed during the RevCon. We, along with other delegations (e.g., Germany) might disagree, albeit for different reasons. The Del sees it as significantly important that we have a well-established, unified position on sampling and analysis and its role, value, etc. during Schedule 2 inspections. Also, we should probably approach the TS about the timing of their report and our thoughts on its value at the RevCon. To miss the opportunity to have a significant discussion on this matter at the RevCon would be a shame.

19. (SBU) General progress on industry issues: In general, progress on industry issues has been painfully slow. The recent

EC decision on timely declarations was the first Industry Cluster decision reached in a year, the last being that on Schedule 3 transfers in November 2006. In many ways, this can be attributed to the fact that certain smaller delegations (e.g., Iran) just do not have the ability or will to focus on any matter outside their pet areas of interest (see the discussion on National Implementation below). When the RevCon looks at the list of industry topics recommended for work by the First RevCon and determines how little progress has been made, it will be an embarrassment. Some delegations have argued in private that perhaps this means that the truly important issues have been dealt with and that we are now just cleaning up the few items that are left. However, the Del believes that we can expect some strong discussion on a number of outstanding industry issues. We know from national papers and statements already made that the UK, Australia and Canada are going to make a fuss about Schedule 2A/2A(asterisk) concentration thresholds, and that in their view it is unconscionable that we have left this group of highly toxic chemicals potentially unregulated. We should expect to be put on the spot (together with Germany and Japan) as the ones who prevented consensus on this matter and as the ones who are ultimately responsible for finding a solution. We should consider whether we need to consult intently with Germany and Japan on this matter and whether we can propose any way forward. Guidance with new approaches or some flexibility would be useful going into such negotiations.

DECLARATION ISSUES

¶10. (SBU) Timely Declarations: The First RevCon pointed to concerns over timely and accurate declarations. We should make sure that the RevCon points to the recent EC decision on this matter (EC-M-27/DEC/CRP.4/Rev.2, dated 26 November 2007) and mentions the importance of continued EC monitoring of the impact of the decision and whether further measures may need to be taken in the future. This seems to be important, given that the decision taken was an EC stand-alone decision (rather than a recommendation to the CSP) and, as such, is more open-ended as to next steps.

¶11. (SBU) Electronic Declarations: The First RevCon discussed the importance of effective handling of declarations and the role that electronic declarations can play therein. We should ask that the significant progress made to date be pointed out at the RevCon. We should also push for even greater electronic reporting by States Parties to the TS, emphasizing how these types of efforts can contribute positively to the work of the Organization and individual States Parties. We know that the TS has focused on certain States Parties where the impact of them shifting to electronic declarations could be of greatest impact to the TS (e.g., China). We also know that the TS has given this topic a lot of attention

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in annual meetings of National Authorities<
regional meetings, etc., and that they are

encouraging State Party-to-State Party cooperation to promote bilateral assistance and the sharing of software tools. We might want to consider asking the TS to prepare a paper or other presentation to the OEWG laying out the costs and benefits of completing the necessary work to get the remaining significant (i.e., larger-declaring) States Parties on board with electronic declarations) data entry savings, efficiency improvements in verification activities, etc. We might also find it helpful to find a vehicle (e.g., a national paper) to share U.S. thoughts on the matter to be considered by the TS in these preparations.

¶12. (SBU) Article VI) transfer discrepancies: The First RevCon discussed the importance of clarifying declaration ambiguities. A consultation on the topic of transfer discrepancies has been active for quite some time. The consultation group made a recommendation early this year to the TS to end the practice of defining transfer

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discrepancies as a percent difference and begin defining these discrepancies in accordance with the relevant declaration thresholds. This new practice seems to have had a very positive impact on this issue, allowing States Parties to better focus on transfer discrepancies of real concern. Also, with the recently adopted decision on timely declarations, it is hoped that the TS

will begin to gather more information about missing transfer declarations that can be used in the reconciliation process. Although the U.S. has expressed its opinion that the current efforts of this consultation are moving in an acceptable direction, it appears unlikely that real progress will be achieved in the near future. We may want to consider the option of reevaluating the need for further consultations on this matter at some point in the future, given the possible reductions in transfer discrepancies. This would allow the facilitators to end the consultation at the appropriate time in the future based upon the overall improvements that have been achieved, rather than the lack of progress on the very complicated (and somewhat controversial) matters that remain.

NATIONAL IMPLEMENTATION

¶13. (SBU) Article VII - the way forward:
Despite the significant efforts the U.S. has made in the area of Article VII, particularly in outreach efforts, many delegations have looked at our limited visible efforts in 2007 and expressed confusion, particularly in light of the strong statement we made at CSP-11 about trying to close the loop on States Parties with declarable chemical industry activities. The RevCon may be a chance for us to regroup and make a further push to include more States Parties in the efforts to assist others in meeting their Article VII obligations. The other problem the delegation faces is that Iran and other NAM delegations clearly have issues that they consider of higher importance (e.g., Articles X and XI), and they see Article VII decisions just a bone they can throw Western

delegations as the balance needed to get their issues forwarded. They have made it clear that they do not consider Article VII as a priority anymore, and they are likely to use the RevCon as the chance to hammer that message home. In practical terms, the annual fight with Iran over decisions on Article VII, Article X, Article XI, and Universality takes a considerable amount of time and resources. Also, as each EC must address whatever progress has been made, the fight gets spread throughout the year. The practical result is that, because these smaller delegations can only keep so many balls in the air at one time, little progress is made on any other matter. We should discuss this internally in light of the overall efficiency of the Organization, particularly the EC, and what changes can be made.

ARTICLE XI

¶14. (SBU) During CSP-12, the Non-Aligned Movement circulated its thoughts on what an action plan for Article XI might address. The NAM, most prominently Iran and Cuba, have already set the stage for a push for more concrete action on Article XI at the RevCon. Del recommends a thorough review of the NAM paper distributed during CSP-12 to

better gauge what specific measures may be proposed during discussions and drafting, to develop constructive responses and possible counterproposals, and to develop strategies to find common areas of interest that can be exploited with other delegations (particularly within the NAM).

SCIENTIFIC ADVISORY BOARD

¶15. (SBU) The Scientific Advisory Board (SAB), which has presented its draft report to the RevCon Working Group, currently meets annually with additional meetings or activities of Temporary Working Groups relying upon voluntary contributions to fund their work. The EC routinely notes reports by the SAB with little to no discussion, and little real oversight. Observations and recommendations from the SAB can generally be placed in one of two categories: those that fall within the purview of the DG/TS to review and possibly implement, and those that have wider policy implications which would require the policy making organs to consider and recommend possible action. Of course, in all cases, the States Parties look to the TS to serve as the first filter for recommendations coming from the SAB and should be willing to pick up those topics

considered to be most appropriately discussed by the Policy Making Organs.

Although establishing a more effective way to integrate the work of the SAB with that of the organization could have the undesired side effect of raising controversial issues for debate, it could also make better use of the highly specialized work of this body, particularly as the OPCW grapples with rapid advances in science and technology. On several occasions, Del has also advocated regularizing support for more than just one annual meeting of the SAB from the OPCW budget; the RevCon may provide an

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appropriate forum for further discussions of this proposal.

¶16. (SBU) Salts: In their preliminary report to the OEWG, the SAB discusses their ongoing & recommendation that all salts of scheduled chemicals be treated in the same way as their corresponding free bases.⁸ Del expects several delegations to pick up on this recommendation again and insist on its discussion within the RevCon. Knowing that this has been a frequent topic of discussion within the interagency, the Del encourages the formalization (or, perhaps, repetition) of our national position on the matter within guidance.

¶17. (SBU) CAS Registry numbers: In their preliminary report to the OEWG, the SAB discusses their position (which is consistent with U.S. position) that CAS numbers are a useful identification aid but not necessarily of regulatory value. We have already heard in several fora from the Italian delegation that their legislation is list-based and, as such, is dependent on the TS continually providing updated lists of

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chemicals that are to be captured by the Convention. This is clearly inconsistent

with the way nearly all States Parties implement the treaty, as it has the potential to create significant gaps, particularly over time. If the Italians attempt to propagate their views at the RevCon, we should be prepared to intervene on this issue and encourage others to do likewise.

REVIEW OF OPCW ADMINISTRATION

¶18. (SBU) The 2008 budget reflected zero nominal growth for the third consecutive year, and the TS has repeatedly indicated that it cannot continue this trend. Especially with calls for more activities (both in Chapter I and Chapter II), including increased inspections, the TS is likely to feel forced to introduce growth budgets. Similarly, late payment by the U.S. of annual assessed contributions continues to draw attention and weaken our ability to push for tighter budgeting.

¶19. (SBU) Although this will become more relevant in future years, the TS needs to begin to come to grips with the eventual transition of the OPCW from a disarmament-priority organization to a nonproliferation-priority organization and how that impacts the staffing and structure of the TS. There appears to be some level of internal organizational review underway within the TS, as indicated by the DG in his statements

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at recent ECs and efforts to align OPCW practices with those of the UN Common System. We believe this type of review should spill over into the RevCon, with an eye to staffing patterns, numbers of positions in different branches, ranking of staff, recruiting (what OPCW needs to do to attract good people), retention, long-term use of short-term staff in de facto permanent positions, etc., as well as the impact of policies such as tenure. On tenure, the DG could be given additional flexibility in waiving tenure considerations (i.e., not capping extensions at 10 years) for key staff in highly specialized areas. With clear U.S. objectives, we could help shape the debate and the outcome on many of these issues.

¶20. (SBU) In May, del held a brown bag lunch with AmCit TS staff. Although drawn from a limited population, del believes that the thoughts expressed at this meeting are probably indicative of the wider view of TS staff. In general, the theme was that good business practices are not applied consistently and, because of that, there is an expectation of continued departure by large numbers of staff, which can be attributed only partly to the tenure policy. The topics discussed, although not in every case appropriate for general discussion within the RevCon, should be considered more generally in our preparations:

- a. Training: Current priorities are centered on the Inspectorate, with little happening elsewhere. Training for maintaining career-relevant certifications (e.g., medical personnel, accountants) is not supported.

There is no standard process for bringing new personnel on board or capturing &institutional memory⁸ when someone leaves. Overall training and development of staff shouhd be reviewed with a view to ameliorating the present situation.

b. Retention: Although HR collects data on why staff leave, nothing appears to be done with it. Inspection deployment issues (e.g., low staffing levels for health and safety personnel mean higher deployment rates, lack of support for inspectors to keep in touch with family members during deployment) are contributing factors. The threat of the tenure policy motivates many to stay silent about their concerns, even going so far as to suggest that inspection team members are afraid to return from an inspection with anything that lookw!remotely like a problem.

c. Recruiting: Employment opportunities are not widely advertised. No-cost advertising opportunities should be explored and used. Given that (1) the majority of experienced applicants in certain career fields (e.g., health and safety) come from a limited number of countries (i.e., Western countries) and (2) the TS makes it a practice\$to get general wide geographical distribution of new employees, the result may be that getting Western employees in certain fields (particularly technical) may be more difficult.

d. Tenure: The selective or delayed implementation of tenure can be seen as favoring some employees and punishing others, and this can create an environment of fear. There seem to be a number of methods for applying the policy, including extensions, and better communication and understanding of the policy could alleviate confusion.

&NON-LETHALS,⁸ INCAPACITANTS AND RIOT CONTROL AGENTS

¶21. (SBU) A common theme among many of the academic and NGO papers and presentations has begun to emerge: a poorly defined desire to do something about what some believe to be an emerging, and alarming, new category of weapons that must somehow be dealt with in the context of the CWC. Several presentations at the OPCW Tenth Anniversary Academic Forum covered this topic, one in unusual depth by presenting a spectrum of scenarios from domestic law enforcement to international armed conflict and an accompanying spectrum of chemicals from riot control agents (RCAs) to Schedule ¶11. The NGO meeting held November 19 in The Hague, specifically for RevCon preparations, continued this trend, with a number of papers on subjects such as &incapacitating biochemical weapons.⁸ Several of the presenters have admitted, however, that while the possibility of use (keying mainly off of the Moscow theater incident in which fentanyl or a derivative appears to have been used) is of concern, there does not at this time appear to be a specific threat.

¶22. (SBU) Discussions have not been limited

to NGO and academic circles. The draft report of the Scientific Advisory Board to the RevCon recommends that the Organization consider &an extension of the Convention,s declaration requirements so that States Parties would have to declare all chemicals they have stockpiled for law enforcement purposes (types, quantities and delivery systems)⁸ and adds that &terminology surrounding so-called non-lethal incapacitants also needs further elaboration.⁸ The DG,s recently released paper on the RevCon (WGRC-2/S/1) also mentions that &in due course, there will also be a need to address questions suc(as what effect the introduction of &non-lethal⁸ weapons for the purposes of law enforcement and of new means for their use will have on the Convention.⁸

¶23. (SBU) Given a growing interest among British NGOs in discussing &non-lethals,⁸ chemicals used for domestic law enforcement, and riot control agents at the RevCon, the UK in particular may be under considerably more pressure to demonstrate increased flexibility in entertaining discussions and possibly even report language. With UK Ambassador Lyn Parker chairing the working group for RevCon preparations, the UK is also less likely to simply close out discussions on these topics. From discussions over the past several months, it is clear that the UK is interested in coming up with an effective strategy to deal with this matter, and UK colleagues have on numerous occasions expressed a strong interest in early indications as to what the U.S. position at the RevCon might be.

¶24. (SBU) Several other delegations have already expressed strong dissatisfaction with the U.S. decision to block ICRC participation (perceived to be motivated by a desire to avoid these discussions). From past discussions, del also expects some delegations may express an interest in codifying certain situations in which riot control agents might be used, such as on UN peacekeeping missions. At the RevCon

Working Group on November 15, Iran also made vague references for the need to look at the use of RCAs by SPs beyond their jurisdiction, the use of RCAs in warfare, and developments in incapacitating agents. Although this may have\$been a general statement of principle, it is also possible that this is an early attempt by Iran to set the stage for criticism of U.S. policy.

¶25. (SBU) There are clear U.S. sensitivities regarding any attempt to &clarify⁸ related provisions in the Convention. At this stage, we may be well served by the fact that few with an interest in these topics have gone so far as to propose specific measures. To have a clear position on the matter, without forbidding discussions (which will frankly be impossible given the recurrence of the topics even in official OPCW documents), may be the best strategy in pushing back on unhelpful suggestions while avoiding the misperception that the U.S. is hiding a secret non-lethal chemical program.

¶26. (SBU) As discussed internally and with

the Close Allies, a significant first step in discussions, and particularly in drafting, will be to ensure that we do not stray beyond the terminology of the CWC. Generalizations about &non-lethals⁸ and &incapacitants⁸ have no place in CWC reporting, and should be avoided. It may be useful, depending on the direction discussions take early next year, to begin quietly educating others on the importance of focusing on the provisions laid out in the Convention. It will also be critical to focus on the General Purpose Criterion as providing a more than adequate safety net when it comes to chemicals not clearly captured in the Schedules.

¶27. (SBU) As has also been raised internally, some part of these discussions can be appropriately redirected to existing provisions. Declarations on national protective programs, for instance, remain sparse, with the facilitator for Article X calling at each consultation for complete, accurate submissions. Effective national implementation measures specifically related to the General Purpose Criterion, as outlined by OPCW Legal Advisor Santiago⁹ Onate at the November 15 meeting of the RevCon Working Group, could also be an avenue to constructively channel concerns.

2012 AND THE NEXT REVIEW CONFERENCE
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¶28. (SBU) Although discussions thus far in the RevCon Working Group have been surprisingly devoid of speculation about 2012, calls to begin exploring what to do when the U.S. (and possibly Russia) fail to meet the final destruction deadline are almost inevitable at the RevCon. As the DG himself has expressed concern that discussions of this nature not dominate the RevCon, del recommends that part of the RevCon guidance clearly articulate how such calls might be countevied. While it is certainly true that 2008 is far too early to make any sort of pronouncement on ability/inability to meet the 2012 deadline, delegations are likely to ask whether the

U.S. believes a separate conference or early RevCon closer to the date would be the⁹ appropriate venue for such discussions, and/or what action the policy making organs should take. On the latter, reiterating our confidence in the policy making organs to take appropriate action should suffice. On the former, it may be worth steering thinking toward simply evaluating the matter at the CSP in 2011, or at most convening a special session of the Conference closer to the deadline itself.

STRATEGY DEVELOPMENT AND TIMELINES

¶29. (U) From an administrative standpoint, del believes it will be useful not only to develop a list of RevCon &shoulds⁸ and &should nots,⁸ but also to take a comprehensive look at the wide range of issues that have been formally marked as &unresolved⁸ or have been discussed in some form of consultation since the last RevCon

(and, in some cases, since the Prepcom). The spectrum runs from topics like the &unresolved8 Challenge Inspection issues (for several of which there is absolutely no need for resolution) to open ended working groups (e.g. the OEWG on Terrorism) to issues that are traditionally in more active facilitations (e.g. Article VII, Article XI). To categorize these issuer and prioritize them according to our own interests and confidence in further progress rehng made might be helpful in evaluating progress made since the last RevCon and possible areas for increased efforts or improvement.

¶30. (U) Del understands that RevCon discussions in Washington are to take place in the coming weeks. Although RevCon strategy will certainly be a focal point of the next Close Allies, meeting (scheduled for March 2008 in Washington), the timing of the meeting may be too close to the RevCon to have sufficient impact. Del recommends initial, informal guidance be drafted by the end of January to facilitate discussions with the Close Alliew here in The Hague that could be qsed to shape the drafting that is scheduled to begin in earnest with weekly meetings from mid-January on. It will also be important to consider where it might be most effective to take the pen on drafting by offering text on certain topics early in the drafting process, and to discuss these efforts with the Allies.

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